

## **Exhibit A**

STATE OF NEW YORK  
DIVISION OF HOUSING AND COMMUNITY RENEWAL  
OFFICE OF RENT ADMINISTRATION  
GERTZ PLAZA  
92-31 UNION HALL STREET  
JAMAICA, NEW YORK 11433

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IN THE MATTER OF THE ADMINISTRATIVE : ADMINISTRATIVE REVIEW  
APPEAL OF : DOCKET NO.: RI410062RT  
  
Marjorie Charron : RENT ADMINISTRATOR'S  
: DOCKET NO.: QG410003TC  
  
: OWNER: 707 Realty Co., LLC  
PETITIONER  
-----X :

ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

The above-named petitioner-tenant filed a Petition for Administrative Review against an order issued by a Rent Administrator concerning the housing accommodation known as 706 Riverside Drive, Apartment 6C, New York, NY.

This proceeding was commenced by the filing of a fair market rent appeal by the tenant, who took occupancy of the subject apartment pursuant to a lease commencing on June 1, 2001 at a rent of \$1,900.00 per month.

In the order under appeal herein, the Rent Administrator adjusted the initial legal regulated rent by establishing a fair market rent of \$1,684.52 per month effective June 1, 2001, the commencement date of the initial rent stabilized lease. The Rent Administrator established the fair market rent based upon the average of the June 1, 2001 regulated rent of \$1,029.34 per month rent for apartment 5C in the subject building and the June 1, 2001 unregulated rent of \$2,000.00 per month submitted by the owner for Apartment 1C in the subject building, plus an increase for apartment improvements of \$169.85. The Rent Administrator utilized the legal regulated rent of \$2,000.00 per month as stated on the lease for Apartment 1C, rather than the preferential rent of \$1,300.00 that was paid by the tenant of that apartment. In addition, the Rent Administrator determined that the complaining tenant had paid excess rent of \$2,069.58 and directed the owner to refund such excess rent to the tenant.

In this petition, the tenant asserts that the \$2,000.00 rent submitted by the owner for Apartment 1C should not have been used in determining the fair market rent for the subject apartment because the actual rent paid by the tenant of Apartment 1C was \$1,300.00 per month. In support of this contention, the tenant cites a July 26, 2002 DHCR opinion letter. The tenant further asserts that it is inaccurate and unfair to use an average based upon only two comparables, one of which is unrealistically high, and that the fair market rent should be determined to be the special fair market rent guidelines amount of \$1,034.48 plus the \$169.85 increase for apartment improvements, or \$1,204.33.

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The Commissioner is of the opinion that this petition should be denied.

Section 2522.3(e) of the Rent Stabilization Code, as amended effective December 20, 2000, provides, in pertinent part, that in determining FMRA's, consideration shall be given to the applicable guidelines promulgated for such purposes by the Rent Guidelines Board and to rents generally prevailing for comparable housing accommodations in buildings located in the same area as the housing accommodation involved. The rent for a comparable rent stabilized housing accommodation may be considered where such rent is an unchallenged rent in effect for a housing accommodation subject to the Rent Stabilization Code on the date the tenant filing the FMRA took occupancy. Under DHCR procedures established to implement this provision, the fair market rent is established at the greater of the special guidelines amount and the rent for the comparable rent stabilized unit. Where the comparable is an unregulated apartment, the rent for the comparable unit will be averaged with the special guidelines amount.

In this case, the June 1, 2001 legal regulated rent for Apartment 1C was the lease rent of \$2,000.00 per month, even though the tenant of that apartment actually paid a lower rent of \$1,300.00 per month. No complaint challenging the lawfulness of the \$2,000.00 per month rent has been filed with the DHCR. The Commissioner therefore finds that it was proper for the Rent Administrator to use the \$2,000.00 per month rent for Apartment 1C in determining the fair market rent for the subject apartment. The July 26, 2002 DHCR Opinion Letter referred to by the tenant deals with the establishment of a legal rent under Section 2521.1(g) of the Rent Stabilization Code for apartments constructed under Section 421-a of the Real Property Tax Law. That Code section has no bearing on this case.

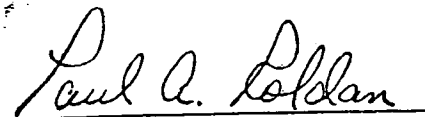
Pursuant to Section 2520.11(r)(4) of the Rent Stabilization Code, the \$2,000.00 per month rent for Apartment 1C is an unregulated rent. Pursuant to current DHCR procedures, the fair market rent for the subject apartment should have been determined by averaging the \$2,000.00 amount with the special guidelines amount of \$1,034.48, and adding on the apartment improvement increase of \$169.85. This results in a fair market rent of \$1,687.09. Since the correct fair market rent of \$1,687.09 is greater than the fair market rent of \$1,684.52 established by the Rent Administrator, and it is DHCR policy not to harm a petitioner on his or her own administrative appeal, the Rent Administrator's order will not be modified to correct this error.

THEREFORE, in accordance with the provisions of the Rent Stabilization Law and Code, it is

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ORDERED, that this petition for administrative review be, and the same hereby is, denied and that the order of the Rent Administrator be, and the same hereby is, affirmed.

ISSUED: NOV 19 2003

A handwritten signature in cursive script, reading "Paul A. Roldan", written in dark ink. The signature is fluid and stylized, with the first letters of each word being capitalized and prominent.

PAUL A. ROLDAN  
Deputy Commissioner